



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/162617

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on January 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (MES) is correctly seeking recovery of FoodShare (FS) overpayments totaling \$2,324 to the petitioner during the period of November 1, 2012 to September 30, 2014, due to failure/refusal to timely report her employment/income from her second job or her daughter's earned income from her employments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County who resides with her adult daughter,   (who turned 18 years of age during October, 2013).

2. The petitioner reported to Milwaukee Enrollment Services (MES) her employment and earned income from [REDACTED].
3. The petitioner failed to report on her June, 2012 or February, 2013 six month report forms (SMRFs) or renewal applications to MES her second employment and income at [REDACTED]. The petitioner was employed at [REDACTED] from about June, 2011 to at least October, 2014. Petitioner admitted during the hearing her failure to timely report her employment and income at [REDACTED].
4. The petitioner failed to timely report to MES her daughter's ([REDACTED]'s) employment and income from [REDACTED] as of June 3, 2014, or from [REDACTED] and [REDACTED], LLC during the period of October, 2013 to October, 2014. See Exhibit 4.
5. MES discovered petitioner's and her daughter's household income through October, 2014 SWICA employment/income matches. See Exhibit 5.
6. MES sent to the petitioner an October 9, 2014 Request for Verification of employment and income for all of the employment and income since 2012 for the petitioner and her daughter.
7. The petitioner's employers did not provide all income verification to MES, and petitioner failed to provide all verification of [REDACTED]'s part-time employment at [REDACTED].
8. MES sent a November 13, 2014 Notice of FS Overpayment to the petitioner stating that petitioner received an overpayment of \$2,069 during the period of November 1, 2012 to October 31, 2013, due to failure to provide accurate employment and income information for her FS household. See Exhibit 2.
9. MES sent a November 13, 2014 Notice of FS Overpayment to the petitioner stating that petitioner received an overpayment of \$255 during the period of November 1, 2013 to September 30, 2014, due to failure to provide accurate employment and income information for her FS household. See Exhibit 3.
10. The petitioner failed to fully report all of her income and her daughter's income with reliable documentation to accurately determine petitioner's total household income eligibility and benefits for the entire FS overpayment period of November 1, 2012 to September 30, 2014.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed and refused to accurately and truthfully report timely and fully the employment and income of petitioner and her daughter and refused to fully cooperate with the county agency in reliably verifying her household's income was below the FS income limit for her FS household of two during the period of November 1, 2012 to September 30, 2014.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added).

In this case, Milwaukee Enrollment Services (MES) proved by the preponderance of the evidence that the basis for the overpayment was clearly client error. During the January 6, 2015 hearing, petitioner admitted that she failed to timely report her second employment/income at [REDACTED] Service. Petitioner also admitted that she did not fully report her daughter's employment or income at [REDACTED] and [REDACTED]. The petitioner attempted unconvincingly, and without any reliable evidence, to deny her ongoing failure to fully report her daughter's income at [REDACTED] and [REDACTED] by alleging that it was only part-time work. The petitioner's testimony was simply not convincing.

The MES representative, Jose Silvestre, presented clear evidence that despite the income verification request, petitioner failed or refused to provide reliable evidence in order for MES to determine her FS income eligibility during the entire November, 2012 through September, 2014 overpayment period. The petitioner was also unable to refute that she made false statements in her renewal FS applications and SMRFs because she failed to report her income from [REDACTED] or her daughter's employment at [REDACTED] or the [REDACTED] and [REDACTED] agencies. As a result, the county agency based upon false information found the petitioner's household income ineligible for FS benefits during the entire overpayment period.

As petitioner refused to provide reliable income verification, MES had no choice but to consider the full amount of her FS benefits to be an overpayment based upon the assumption that petitioner's household was above the FS income eligibility limit for the entire FS overpayment period. The hearing record is clear that petitioner by her actions has failed or refused to provide the requested verification which she falsely omitted from the time of about her November, 2012 SMRF. There is a negative inference that can be taken that if a party refuses to provide required, relevant information, it can be presumed that such evidence will have a negative impact on that party's case. In this case, given the unusual circumstances of this case, there is no alternative but to conclude that the petitioner's total household income was above the FS income eligibility limit for the entire FS overpayment period of November 1, 2012 to September 30, 2014.

The petitioner did not contest that her FS household had received FS benefits during the period of November 1, 2012 through September 30, 2014. Furthermore, the petitioner was unable to offer any reliable evidence to refute the county agency's FS overpayment case. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, for the above reasons, I conclude that Milwaukee Enrollment Services is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of November 1, 2012 to September 30, 2014 in the total amount of \$2,324, due to failure/refusal to timely report her employment/income or her daughter's earned income from her employments which should have been included in her FS eligibility and benefit determinations.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services is correctly seeking recovery of FoodShare (FS) overpayments totaling \$2,324 to the petitioner during the period of November 1, 2012 to September 30, 2014, due to failure/refusal to timely report her employment/income from her second job or her daughter's earned income from her employments to establish that her FS household's income was below the FS income eligibility limit during the entire FS overpayment period.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of February, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 10, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability